

§ 5.537 Evidence.

(a) In these proceedings, strict adherence to the rules of evidence is not required. However, the Federal Rules of Evidence, as amended, shall be the primary guide for evidentiary matters, where applicable.

(b) Rules 410, 606, 706, and 1101 of the Federal Rules of Evidence shall not be applicable to these proceedings.

(c) In conducting a hearing the Administrative Law Judge will extend reasonable latitude to the respondent who does not have professional counsel to represent him. Investigating officers and counsel should be required to conform to the rules of evidence to a greater degree than respondents without counsel.

§ 5.539 Burden of proof.

The investigating officer has the burden of proof.

§ 5.541 Official notice by Commandant and Administrative Law Judge.

(a) In addition to other rules providing for judicial notice, the Commandant and the Administrative Law Judges will consider the following without requiring the investigating officer or the respondent to submit them in evidence:

(1) *Federal Law.* The Constitution; Congressional Acts, Resolutions, Records, Journals and Committee Reports; Decisions of Federal Courts; Executive Orders and Proclamations; and rules, regulations, orders and notices published in the FEDERAL REGISTER.

(2) *State law.* The Constitution and public laws of each State.

(3) *Governmental organizations.* The organization, territorial limitations, officers, departments, and general administration of the Government of the United States, its States, territories, possessions and the Commonwealth of Puerto Rico.

(4) *Commandant's decisions.* The Commandant's decisions in all appeal and review cases under this part. (See § 5.65.)

(b) Matters officially noticed by the Commandant or the Administrative Law Judge are specified on the record. The investigating officer and the respondent shall be afforded an opportunity,

on the record, to rebut such matters.

§ 5.543 Certification of extracts from shipping articles, logbooks, etc.

(a) In addition to other rules providing for authentication and certification, extracts from records in the custody of the Coast Guard, shipping articles, and logbooks, may be identified and authenticated by certification of an investigating officer or custodian of such records, or by any commissioned officer of the Coast Guard.

(b) Certification must include a statement that the certifying individual has seen the original and compared the copy with it and found it to be a true copy. The individual so certifying shall sign name, rank or title, and duty station.

§ 5.545 Weight of entries from logbooks.

(a) An entry in an official logbook of a vessel concerning an offense enumerated in 46 U.S.C. 11501, made in substantial compliance with the procedural requirements of 46 U.S.C. 11502, is admissible in evidence and constitutes prima facie evidence of the facts recited.

(b) An entry in any logbook kept on a vessel may be admitted into evidence as an exception to the hearsay rule, under the Federal Rules of Evidence, as a record of a regularly conducted activity.

(c) An entry in any logbook made in compliance with the procedural requirements of 46 U.S.C. 11502 may be given added weight by the Administrative Law Judge.

§ 5.547 Use of judgment of conviction.

(a) A judgment of conviction by a Federal court is conclusive in proceedings under this part concerning incidents described in 46 U.S.C. 7703, where acts or offenses forming the basis of the charges in the Federal court are the same.

(b) Where the acts involved in a judgment of conviction of a State court are the same as those involved in proceedings under this part concerning incidents described in 46 U.S.C. 7703, the judgment of conviction is not conclusive of the issues decided. However,